

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

DAVID BLAKE CLAY, )  
                          )  
                         Petitioner, )  
                          )  
                         vs.        )                           No. CIV-15-159-C  
                          )  
STATE OF OKLAHOMA,    )  
                          )  
                         Respondent. )

ORDER ADOPTING SUPPLEMENTAL REPORT AND RECOMMENDATION

This action for habeas corpus relief brought by a prisoner, proceeding pro se, was referred to United States Magistrate Judge Gary M. Purcell, consistent with the provisions of 28 U.S.C. § 636(b)(1)(B). Judge Purcell entered a Supplemental Report and Recommendation on June 29, 2015, to which Petitioner has timely objected. The Court therefore considers the matter de novo.

Petitioner does not dispute the factual or legal conclusions in the Supplemental Report and Recommendation, but asserts because his previous case was dismissed for failure to exhaust, and he has now exhausted his available state remedy, his case may now proceed. However, as Judge Purcell notes, his state post-conviction motion was outside the federal habeas statute of limitations when filed and did not toll the limitation period.

Accordingly, the Court adopts, in its entirety, the Supplemental Report and Recommendation of the Magistrate Judge (Dkt. No. 24), and for the reasons announced

therein, this petition for habeas corpus relief is dismissed as untimely. As no amendment can cure the defect, this dismissal acts as an adjudication on the merits, and a judgment will enter.

IT IS SO ORDERED this 19th day of August, 2015.



ROBIN J. CAUTHRON  
United States District Judge